

## THIRD DIVISION

[ G.R. No. 169858, January 26, 2010 ]

**JUANITO GERONIMO, ANTONIA LIMSON AND LINDA GERONIMO,  
PETITIONERS, VS. THE HEIRS OF CARLITO GERONIMO  
REPRESENTED BY ANGELITO GERONIMO,<sup>[1]</sup> RESPONDENTS.**

### RESOLUTION

#### **CORONA, J.:**

This petition<sup>[2]</sup> seeks the reversal of the May 25, 2005 decision<sup>[3]</sup> and September 20, 2005 resolution<sup>[4]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 84633.

Petitioners Juanito Geronimo, Antonia Limson and Linda Geronimo were the registered owners of a parcel of land in Balagtas, Bulacan.<sup>[5]</sup> In 1989, their brother, Carlito Geronimo proposed to develop the property into a resort. Petitioners were enticed by the idea as there was no existing resort facility in the area at that time.

Because their brother had no source of income and they were residing elsewhere,<sup>[6]</sup> petitioners "sold" the land to him and registered it in his name. Carlito did not pay petitioners a single centavo but was designated as project manager.<sup>[7]</sup>

Subsequently, Carlito obtained a loan from the Bank of Floridablanca secured by a real estate mortgage over the same property. With the proceeds of the loan and the capital infused by petitioners, Carlito developed the property into the Villa Cristina Resort. He and one Dionisia Santos jointly managed it until he died on June 13, 2002.

On February 7, 2003, petitioners filed a petition for the cancellation of title against respondents, the heirs of Carlito Geronimo<sup>[8]</sup> represented by Angelito Geronimo, in the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 17, asserting that the implied trust created between them and Carlito was extinguished upon the latter's death.

Thereafter, the RTC ordered the service of summons on respondents but they were not known in their purported address.<sup>[9]</sup> Thus, on petitioners' motion, the RTC ordered the issuance of an alias writ of summons to respondents requiring them to file an answer within 90 days from receipt of notice (or the date of publication).<sup>[10]</sup>

On September 9, 2003, respondents received the copy of the alias writ of summons sent by registered mail.<sup>[11]</sup> Inasmuch as the 90-day period to file their answer had almost expired, respondents immediately moved for a 15-day extension. The RTC granted the motion in an order dated September 10, 2003.<sup>[12]</sup> Respondents subsequently moved for additional extensions which the RTC graciously granted in

its October 9, 2003<sup>[13]</sup> and October 17, 2003<sup>[14]</sup> orders.

Respondents posted their motion to dismiss on October 27, 2003. The RTC received it on November 5, 2003.

Respondents, in their motion, contended that the court did not acquire jurisdiction over their persons as petitioners knew that they were residing in Block 27, Lot 4, Diego Silang Street, New Capitol Estates I, Diliman, Quezon City, not in 165 Tandang Sora Avenue, Quezon City. The service of summons through publication was therefore improper. Respondents likewise asserted that petitioners did not have a cause of action against them. Petitioners were well-educated individuals; had they not received any consideration for the property, they would not have allowed Carlito to register it in his name.

Meanwhile, because the RTC did not receive respondents' motion to dismiss within the extension granted by the court,<sup>[15]</sup> petitioners moved to declare them in default.

In an order dated February 17, 2004, the RTC declared respondents in default and ordered petitioners to present evidence *ex parte*.<sup>[16]</sup> Respondents moved for reconsideration but it was denied in an order dated May 12, 2004.<sup>[17]</sup>

Meanwhile, or on March 15, 2004, the RTC proceeded with the *ex parte* presentation of evidence. Petitioners presented Dionisia Santos as their principal witness. She testified that she and Carlito jointly managed the operations of the Villa Cristina resort and that they acted in accordance with the instructions of petitioners (particularly Antonia and Linda). Petitioners likewise presented a demand letter from respondents asking them to cease operating the resort on the ground that the property belonged to their deceased father, Carlito. In view of these pieces of evidence, the RTC concluded that petitioners were able to prove their allegations by preponderance of evidence. An implied trust<sup>[18]</sup> had indeed been created between petitioners and Carlito.

In a decision dated May 25, 2004,<sup>[19]</sup> the RTC nullified the sale of the property to Carlito and ordered the Registrar of Deeds to cancel his title and issue a new one in the names of petitioners.

Aggrieved, respondents immediately filed a petition for certiorari in the CA.<sup>[20]</sup> They asserted that the RTC committed grave abuse of discretion in issuing the May 12, 2004 order and rendering the May 25, 2004 decision. The RTC should not have declared them in default<sup>[21]</sup> since they mailed the motion to dismiss within the period of extension granted by the trial court.<sup>[22]</sup>

In a decision dated May 24, 2005, the CA, noting that respondents posted their motion to dismiss on October 27, 2003, granted the petition and remanded the case for further proceedings.

Petitioners moved for reconsideration but it was denied in a resolution dated September 20, 2005.<sup>[23]</sup>

Hence, this recourse where petitioners assert that the CA erred in granting the petition for certiorari considering that respondents did not move for the reconsideration of the May 25, 2004 RTC decision before filing the said petition.

The petition has merit.

Settled is the rule that a special civil action for certiorari can prosper only if the aggrieved party has no other plain, speedy and adequate remedy in the ordinary course of law, such as a motion for reconsideration, so as to allow the lower court to correct its alleged error.<sup>[24]</sup>

Respondents did not move for the reconsideration of the May 25, 2004 decision of the RTC. Considering that the RTC leniently granted respondents' motions for extension to file an answer, it did not render the assailed order and decision arbitrarily by reason of personal hostility.<sup>[25]</sup> Thus, a motion for reconsideration, if meritorious, was not useless.<sup>[26]</sup> Consequently, the petition for certiorari should have been dismissed outright for respondent's failure to file a motion for reconsideration.

**WHEREFORE**, the petition is hereby **GRANTED**. The May 25, 2005 decision and September 20, 2005 resolution of the Court of Appeals in CA-G.R. No. SP No. 84633 are hereby **REVERSED** and **SET ASIDE**. The February 17, 2004 and May 12, 2004 orders and May 25, 2004 decision of the Regional Trial Court of Malolos, Bulacan, Branch 17 are hereby **REINSTATED**.

Costs against respondents.

**SO ORDERED.**

*Corona, (Chairperson), Carpio\*, Velasco, Jr., Nachura and Peralta, JJ., concur.*

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\* Per Special Order No. 818 dated January 18, 2010.

[1] The Court of Appeals was impleaded as party-defendant but was excluded pursuant to Section 4, Rule 45 of the Rules of Court.

[2] Under Rule 45 of the Rules of Court.

[3] Penned by Associate Justice Rosalinda Asuncion-Vicente and concurred in by Associate Justices Godardo A. Jacinto (retired) and Bienvenido L. Reyes of the Second Division of the Court of Appeals. *Rollo*, pp. 29-44.

[4] Penned by Associate Justice Rosalinda Asuncion-Vicente and concurred in by Associate Justices Godardo A. Jacinto (retired) and Regalado E. Maambong (retired) of the Special Former Second Division of the Court of Appeals. *Id.*, pp. 46-47.

[5] Petitioners purchased the property from Petra Marcelino in 1977 for P9,000. Thus, TCT No. 100048 (in the name of Marcelino) was cancelled and TCT No.